



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

C-570-085

Certain Quartz Surface Products from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist with respect to imports of certain quartz surface products (quartz surface products) from certain producers and exporters from the People's Republic of China (China).

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1791.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2018, Commerce received a countervailing duty (CVD) petition concerning imports of quartz surface products from China filed in proper form on behalf of the petitioner, Cambria Company LLC.¹ On May 16, 2018, we initiated this investigation,² and on September 21, 2018, we published an affirmative *Preliminary Determination*.³

¹ See "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Quartz Surface Products from the People's Republic of China," dated April 17, 2018 (Petition).

² See *Certain Quartz Surface Products from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 22618 (May 16, 2018) (*Initiation Notice*), and accompanying Initiation Checklist.

³ See *Certain Quartz Surface Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Determination*,

Commerce selected Fasa Industrial Corporation, Limited (Fasa Industrial), Foshan Yixin Stone Co., Ltd. (Foshan Yixin), and Foshan Hero Stone Co., Ltd. (Hero Stone) as the individually-examined respondents in this investigation. With respect to Hero Stone and Fasa Industrial, in the *Preliminary Determination* we based the subsidy rates for these respondents on adverse facts available (AFA), in accordance with section 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).⁴

On October 9, 2018, the petitioner alleged that critical circumstances exist with respect to imports of quartz surface products from China, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206.⁵

In accordance with 19 CFR 351.206(c)(1), if the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the final determination,⁶ Commerce will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Commerce will issue its preliminary finding of critical circumstances within 30 days after the petitioner submits the allegation.⁷

Period of Investigation (POI)

The POI is January 1, 2017, through December 31, 2017.

Critical Circumstances Allegation

The petitioner alleged a massive increase of imports of certain quartz surface products from China and provided monthly import data for the period January 2017 through August

83 FR 47881 (September 21, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

⁴ See *Preliminary Determination* PDM at Use of Facts Otherwise Available and Adverse Inferences.

⁵ See Letter from the petitioner, “Certain Quartz Surface Products from the People’s Republic of China: Amendment to Petition for the Imposition of Antidumping and Countervailing Duties to Allege Existence of Critical Circumstances,” dated October 9, 2018 (Critical Circumstances Allegation).

⁶ The final determination for this CVD investigation is currently due no later than January 28, 2019.

⁷ See 19 CFR 351.206(c)(2)(ii).

2018.⁸ The petitioner states that a comparison of total imports, by quantity, for the period February 2018 through April 2018, to the period May 2018 through July 2018, shows that imports of quartz surface products from China increased by 81 percent,⁹ which is considered “massive” under 19 CFR 351.206(h)(2). The petitioner also alleges that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the Subsidies and Countervailing Measures Agreement (SCM Agreement).¹⁰

Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement;¹¹ and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.¹²

⁸ See Amended Critical Circumstances Allegation at Exhibit 1.

⁹ See Critical Circumstances Allegation at 2.

¹⁰ *Id.* at 5-6.

¹¹ Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). See *e.g.*, *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002) (*Steel Wire from Germany*).

¹² See 19 CFR 351.206(i).

Imports must increase by at least 15 percent during the comparison period to be considered massive.¹³

Foshan Yixin

In the *Preliminary Determination*, we found that Foshan Yixin did not receive any countervailable subsidies during the POI that are inconsistent with the SCM Agreement.¹⁴

Accordingly, because the requirement under section 703(e)(1)(A) of the Act has not been met, we preliminarily determine that critical circumstances do not exist with respect to Foshan Yixin.

Fasa Industrial and Hero Stone

As explained in our *Preliminary Determination*, we applied total adverse facts available (AFA) to Fasa Industrial and Hero Stone, pursuant to section 776(b) of the Act. In applying total AFA to these two companies, we preliminarily determined that both Fasa Industrial and Hero Stone benefited from countervailable subsidies under the “Export Assistance Grants” program.¹⁵ Although we did not make a preliminary finding as to whether the “Export Assistance Grants” program was inconsistent with the SCM Agreement in the *Preliminary Determination*, we now preliminarily find, pursuant to section 776(b) of the Act, that there is a reasonable basis to believe or suspect that the program, as alleged in the Petition and supported by information reasonably available to the petitioner, is export contingent within the meaning of section 771(5A)(B) of the Act and, thus, inconsistent with the SCM Agreement.¹⁶ We preliminarily found this program to have a program-specific rate of 0.58 percent.¹⁷ We are making the inconsistency determination with regard to this program, which had the lowest rate in the

¹³ See 19 CFR 351.206(h)(2).

¹⁴ See *Preliminary Determination* PDM at Analysis of Programs.

¹⁵ *Id.* at 11.

¹⁶ See Countervailing Duty Investigation Initiation Checklist: Certain Quartz Surface Products from the People’s Republic of China, dated May 7, 2018.

¹⁷ See *Preliminary Determination* PDM at Appendix.

Preliminary Determination among the programs alleged to be inconsistent with the SCM Agreement. In so doing, we intend to limit the corresponding offset to the dumping margin (if one is found) in the companion antidumping duty investigation, which best fulfills our statutory mandate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,”¹⁸ and induce future cooperation by companies in investigations where the petitioners allege the existence of programs potentially inconsistent with the SCM Agreement.

Because we preliminarily find that the “Export Assistance Grants” program is export contingent, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met. In addition, for the purposes of the “massive imports” analysis, we preliminarily determine, pursuant to section 776(b) of the Act, that Fasa Industrial and Hero Stone shipped quartz surface products in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 703(e)(1)(B) of the Act.¹⁹ As a result, we preliminarily determine that critical circumstances exist with regard to Fasa Industrial and Hero Stone.

All Other Companies

We based the all-others rate applied in the *Preliminary Determination* on the rate preliminarily calculated for Foshan Yixin. As noted above, we preliminarily found that Foshan Yixin did not use any countervailable subsidies inconsistent with the SCM Agreement. As a result, we also preliminarily determine that all other exporters of subject merchandise from China not selected as mandatory respondents did not use countervailable subsidies inconsistent

¹⁸ Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) at 870, *reprinted in* 1994 U.S.C.C.A.N. 4040, 4199.

¹⁹ See Critical Circumstances Allegation at Exhibit 1.

with the SCM Agreement, and thus preliminarily find that critical circumstances do not exist with respect to the companies covered by the all-others rate.

Final Determination

We will make a final determination concerning critical circumstances in the final determination of this investigation, which is currently scheduled for January 28, 2019.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.²⁰ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²¹

Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.²²

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for Fasa Industrial and Hero Stone, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from the China entered, or withdrawn from warehouse for consumption, on or after June 23, 2018, which is 90 days prior to the date of publication of the *Preliminary Determination* in the *Federal Register*. For such entries, CBP

²⁰ See 19 CFR 351.309(d)(1).

²¹ See 19 CFR 351.309(c)(2) and (d)(2).

²² See 19 CFR 351.303(b)(1).

shall require a cash deposit equal to the estimated preliminary subsidy rates established for Fasa Industrial and Hero Stone in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: November 8, 2018

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[FR Doc. 2018-24941 Filed: 11/14/2018 8:45 am; Publication Date: 11/15/2018]